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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,372	08/22/2003	Timothy H. Floyd	5082-09908	8664
35690	7590	02/04/2005	EXAMINER	
MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C.			KAUFMAN, JOSEPH A	
P.O. BOX 398			ART UNIT	
AUSTIN, TX 78767-0398			PAPER NUMBER	

3754

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/646,372	Applicant(s) FLOYD ET AL.	
	Examiner Joseph A. Kaufman	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 970-1032 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 970-1032 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/5/03, 12/12/03</u> | 6) <input type="checkbox"/> Other: ____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 970-982, 984-1003, 1005-1024, 1026-1032 are rejected under 35 U.S.C. 103(a) as being unpatentable over Homan '917 in view of Maltsis.

Homan shows storage containers 14a-14d, 16a, 16b; mixing system 74, 76; storage vessels discussed in column 5, line 56; dispensing conduit 74; water/carrier fluid supply discussed in column 5, lines 3-39; pumps 30a-30d having conduits connected to them as seen in Figure 6; as anyone who uses the device is a "user", the user operates the device; quick coupling 54; check valve 58'-58''''; transparent walls 37a-37d; shut off valve 38; and the containers are refillable. Homan lacks multiple mixing systems and dispensing conduits; air actuation of the pumps and the associated

structure; the details of the applicators and the cabinet; the size of the dispenser; ID tags and locks; the types of products dispensed; the counting and reporting system; and the way of charging the fees for the use of the dispenser/materials. Maltsis shows a plurality of dispensing conduits 5, 18 having applicators/spray nozzles (clearly adjustable by how much one presses the trigger); the system dispenses multiple auto care products as noted in column 2, lines 46-57; counting system 19 discussed in column 2, lines 8-22; reporting system 20; enclosing cabinet 1; and wheels 3. It would have been obvious to one of ordinary skill in the art to provide the specifics of the Maltsis device with the mixing apparatus of Homan as Maltsis provides the details (the storage containers, etc.) broadly discussed by Homan. In other words, Homan provides the device for mixing of the raw materials and Maltsis goes into the details of storing the mixed materials and dispensing them. One of ordinary skill would clearly look to a device like Maltsis in order to dispense the mixtures of products formed by Homan. Note, that the counting and reporting system could clearly and obviously be programmed to count, charge a fee, and report on numerous functions based on use, including the number of autos, the number of times used, amount of time used, etc. Further, pneumatic actuation of the pumps (with the quick coupling) is an obvious substitution of the hydraulic actuation of Homan's pumps as they are functionally equivalent and would lighten the device as air is lighter than hydraulic fluid. Providing multiple mixing and dispensing systems would have been obvious in order to prevent contamination of the products. The size of the cabinet and the amount of uses before refilling would have been obvious depending on the cost/benefit of making a

large/smaller device and the intended amount of use of the device. Providing id tags and locks are obvious ways to keep track of where each device is, what each device is dispensing, and who has access to it. Finally, the different ways to collect fees would have been obvious to one of ordinary skill in the art as the maker/distributor of the devices would clearly employ the optimal way to earn the most money while keeping the users satisfied. The method follows clearly from the apparatus, the above discussion, and the specifications of Homan and Maltsis.

4. Claims 983, 1004, 1025 are rejected under 35 U.S.C. 103(a) as being unpatentable over Homan as modified by Maltsis as applied to claim 970, 991 and 1012 above, and further in view of Parks.

Homan and Maltsis have been discussed above, but lack the automatic refill based on level control. Parks shows a float attached to sensor 42 in Figure 1. It would have been obvious to employ a float as taught by Parks on the device of Homan and Maltsis in order to regulate the amount of material in the various containers (which would prevent overfilling or stopping of dispensing caused by the need to refill).

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 970-1032 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over all claims of copending Application No. 10/646,338 (see representative claim 401); 10/646,370 (see representative claim 760); 10/646,630 (see representative claim 650); 10/646,622 (see representative claim 880); 10/646,523 (see representative claim 279); and 10/646,629 (see representative claim 709). Although the conflicting claims are not identical, they are not patentably distinct from each other because they are merely different combinations of the same elements in either apparatus or method form.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ray, Loeb et al., Barbe, McClure, Jr. et al., Ambler and Noraas et al. show other fluid mixing devices; Junker shows an overhead dispensing system; and Clarke et al. and Homburg et al. show other mobile dispensers.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph A. Kaufman whose telephone number is (571) 272-4928. The examiner can normally be reached on Monday-Thursday, 5:30AM-2PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Joseph A. Kaufman
Primary Examiner
Art Unit 3754
2/2/05

jak
February 2, 2005